

Southern Missouri Regional MLS, LLC. IDX/VOW Data Access Agreement

This **AGREEMENT** is made and entered into by Southern Missouri Regional MLS, LLC ("**MLS-SOMO**"), a wholly owned subsidiary of Multilist Service of Springfield REALTORS®, Tri-Lakes Board of REALTORS®, Southwest Board of REALTORS®, Ozark Trail Board of REALTORS®, West Plains Board of REALTORS®, Newton-McDonald Counties Board of REALTORS®, and Ozarks Board of REALTORS®. ("**MLS-SOMO**"), with offices at 1310 E. Primrose, Springfield MO 65804; the real estate brokerage firm identified as "Firm" on the signature page below ("**Firm**"); the Salespersons affiliated with Firm that are identified on the signature page and in Exhibit A, if any (collectively the "**Salesperson Party**"); and the individual or business association identified as "Consultant" on the signature page below, if any ("**Consultant**").

DEFINITIONS

1. For purposes of this Agreement, the following terms shall have the meanings set forth below.

Confidential Information: "Confidential Information" means information or material proprietary to a party or designated "confidential" by the party and not generally known to the public that the other parties may obtain knowledge of or access to as a result of this Agreement. Confidential Information includes, but is not limited to, the following types of information (whether in oral, visual, audio, written or other form): (a) all MLS-SOMO Data, except to the extent to which this Agreement and the MLS-SOMO Policies permit its disclosure; (b) IP addresses, access codes and passwords; (c) any information that MLS-SOMO obtains from any third party that MLS-SOMO treats as proprietary or designates as Confidential Information, whether or not owned or developed by MLS-SOMO; and (d) any information designated as confidential or private by any applicable state, federal, local or other law, regulation or directive. Confidential Information does not include information that is or becomes publicly available by other than unauthorized disclosure by the receiving party; independently developed by the receiving party; received from a third party who has obtained and disclosed it without breaching any confidentiality agreement; or already possessed by the receiving party at the time of its disclosure.

Data Interface: The transport protocols and data storage formats provided by MLS-SOMO for use by Firm, Salesperson Party, and Consultant; MLS-SOMO may modify the Data Interface in its sole discretion from time to time.

Firm Internal Use: Any use of those portions of the MLS-SOMO Data relating to Firm's own listings; and any use of those portions of the MLS-SOMO Data relating to listings of Participants other than Firm that exposes MLS-SOMO Data only to Firm-Related Persons and to Salespersons affiliated with Firm, subject to the MLS-SOMO Policies.

Firm-Related Persons: Consultant, if any, and employees of Firm who are not Salespersons or broker/managers.

IDX: Use and display of portions of the MLS-SOMO Data under the Internet Data Exchange provisions of the MLS-SOMO Policies.

MLS-SOMO Data: Data relating to real estate for sale, previously sold, or listed for sale, and to MLS-SOMO Participants (including text, photographs, and all other data formats now known or hereafter invented) entered into MLS-SOMO's databases by MLS-SOMO Participants and MLS-SOMO, or on their behalf.

MLS-SOMO Policies: MLS-SOMO's Rules and Regulations, as amended from time to time, and any operating policies promulgated by MLS-SOMO.

Participant: This term has the meaning given to it in the MLS-SOMO Policies. For purposes of this Agreement, "Participant" does not apply to participants of MLSs other than MLS-SOMO. Where applied in this Agreement to Participants other than Firm, "Participant" also includes Salespersons affiliated with those Participants for whom the Participants are responsible under the laws of the State of Missouri.

Salesperson: Any person holding a real estate license in Missouri who is not a Participant but who is subject to a Participant's supervision under the laws of Missouri. May also be referred to as "Subscriber" by SOMO IDX Rules & Regulations.

Second Level Domain: Second Level Domain: A second-level domain is the part of a domain name or website address that comes before the top-level domain (tld).

Third Level Domain: A third-level domain name is the part of a domain name or website address that comes before the second-level domain name. Third-level domains are also called "sub-domains" as they sometime refer to specific sections or pages of a website. Ex: In office.janesmith.com, "office" is the third-level domain, "janesmith" is the second-level domain, and ".com" is the tld.

VOW: Use and display of portions of the MLS-SOMO Data under the Virtual Office Website (VOW) provisions of the MLS-SOMO Policies.

MLS-SOMO'S OBLIGATIONS

2. MLS-SOMO grants to Firm and Salesperson Party a non-exclusive, world-wide license to make copies of, display, perform, and make derivative works of the MLS-SOMO Data, during the term of this Agreement, only to the extent expressly permitted by and subject at all times to the terms and restrictions of this Agreement; any other use of the MLS-SOMO Data is hereby prohibited. All licenses hereunder shall terminate upon the termination of this Agreement. This Agreement is a non-exclusive license, and not a sale, assignment, or exclusive license. MLS-SOMO retains all rights not expressly granted herein.

3. MLS-SOMO agrees to provide to Firm, Salesperson Party, and Consultant, during the term of this Agreement, (a) access to the MLS-SOMO Data via the Data Interface under the same terms and conditions MLS-SOMO offers to other MLS-SOMO Participants; (b) seven days' advance notice of changes to the Data Interface; and (c) seven days' advance notice of changes to the MLS-SOMO Policies. MLS-SOMO does not undertake to provide technical support for the Data Interface or the MLS-SOMO Data. The Data Interface, together with access to the MLS-SOMO Data, may from time-to-time be unavailable, whether because of technical failures or interruptions, intentional downtime for service or changes to the Data Interface, or otherwise. Any interruption of access to the Data Interface or MLS-SOMO Data shall not constitute a default by MLS-SOMO under this Agreement.

FIRM'S OBLIGATIONS

4. Firm and Salesperson Party shall comply with the MLS-SOMO Policies at all times. In the event of any perceived conflict between the MLS-SOMO Policies and this Agreement, the MLS-SOMO Policies shall govern.

5. Firm shall use the MLS-SOMO Data obtained under this Agreement for Firm Internal Use, IDX, and VOW use only. Salesperson Party shall use the MLS-SOMO Data obtained under this Agreement for VOW and IDX use only. Any other use is strictly prohibited. Firm and Salesperson Party shall not make the MLS-SOMO Data or Confidential Information available to any third party unless expressly authorized to do so under this Agreement. Firm and Salesperson Party may display the MLS-SOMO Data on web sites only

to the extent permitted by the MLS-SOMO Policies and then only on a site or sites resident at the second-level and third-level domain(s) indicated on the signature page and in Exhibit A of this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

6. Firm and Salesperson Party acknowledge that ownership and use rights relating to copyrights in the MLS-SOMO Data are defined in the MLS-SOMO Policies or in the terms of the participant and subscriber agreements between MLS-SOMO Firm and Salesperson Party, or both. Firm and Salesperson Party shall not challenge or take any action inconsistent with MLS-SOMO's ownership of or rights in the MLS-SOMO Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

7. If MLS-SOMO notifies Firm or Salesperson Party of a breach of the MLS-SOMO Policies or this Agreement and Firm or Salesperson Party does not immediately cure the breach, Firm and Salesperson Party shall hold Consultant harmless from any liability arising from Consultant's cooperation with MLS-SOMO under Paragraph 10.

8. Firm and Salesperson Party shall pay the fees, if any, that MLS-SOMO customarily charges other MLS-SOMO Participants for data access. Firm and Salesperson Party acknowledge receipt of MLS-SOMO's current schedule of such fees, if any. MLS-SOMO may in its sole discretion establish or modify its schedule of fees upon 30 days' written notice to Firm and Salesperson Party. Firm and Salesperson Party shall be liable for all costs, including reasonable attorney fees, associated with collecting amounts due under this Agreement.

9. Firm is surety for Salesperson Party's and Consultant's obligations under this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

CONSULTANT'S OBLIGATIONS

10. Consultant shall immediately correct any breach of this Agreement or violation of the MLS-SOMO Policies within its control, whether committed by Firm, Salesperson Party, or Consultant, upon notice from MLS-SOMO.

11. Consultant acknowledges that (as among the parties to this Agreement) Firm and MLS-SOMO possess all right, title, and interest in all copyrights in the MLS-SOMO Data. Consultant shall not challenge or take any action inconsistent with MLS-SOMO's and Firm's ownership of or rights in the MLS-SOMO Data. The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

12. Consultant shall not make the MLS-SOMO Data or the Confidential Information available to any third party, except on behalf of Firm and Salesperson Party and in a manner consistent with Firm's and Salesperson Party's obligations under Paragraphs 4 through 9 of this Agreement; nor shall it make any other use of the MLS-SOMO Data, whether commercial or personal. **In the event that Consultant provides services to Participants other than Firm (or to Salespersons affiliated with Firm other than the Salesperson Party), Consultant must enter separate contracts with MLS-SOMO. Consultant must ascertain, using the Data Interface on a daily basis, that each Participant to which Consultant provides services remains an eligible Participant; and in the case of Salespersons, that each Salesperson Party remains affiliated with Firm. Failure to comply with the provisions of this paragraph, will result in MLS-SOMO terminating all of Consultant's access to the MLS-SOMO Data under this Agreement and all similar agreements.** The provisions of this paragraph shall survive the expiration or other termination of this Agreement in perpetuity.

13. Consultant is surety for Firm's and Salesperson Party's obligations to pay fees under Paragraph 8. The provisions of the preceding sentence shall survive the expiration or other termination of this Agreement in perpetuity. Consultant shall notify MLS-SOMO within five business days of any change to the information relating to it in this Agreement, including change of its corporate name or address.

AUDITS OF COMPLIANCE

14. MLS-SOMO may, or at its option may engage an independent third party to, review, inspect, and test the books, records, equipment, and facilities of Firm, Salesperson Party, and Consultant to the extent reasonably necessary to ascertain Firm's, Salesperson Party's, and Consultant's compliance with this Agreement ("Audit"). MLS-SOMO may conduct an Audit upon any notice reasonable under the circumstances. Audit activities may include, without limitation, obtaining full access to Firm's, Salesperson Party's, and Consultant's web sites and systems to ensure that MLS-SOMO Data is displayed in accordance with the MLS-SOMO Policies; using all features available to end-users of Firm's, Salesperson Party's, and Consultant's systems that employ the MLS-SOMO Data; and posing as consumers to register and test services Firm, Salesperson Party, and Consultant make available to consumers using the MLS-SOMO Data. MLS-SOMO shall pay the costs it incurs, and the out-of-pocket costs Firm, Salesperson Party, and Consultant incur, as part of any Audit; provided, however, Firm or Salesperson Party shall be liable for all costs of any Audit that discloses that Firm, Salesperson Party, or Consultant has breached this Agreement. The provisions of this paragraph shall survive the expiration or other termination of this Agreement for one year.

CONFIDENTIAL INFORMATION

15. The parties shall protect the Confidential Information with the same degree of care they take to protect their own sensitive business information of like kind, but in no event less than reasonable care. A party may disclose Confidential Information if such disclosure is required by law or court order; provided, however, that such party make commercially reasonable efforts to notify the others in writing in advance of disclosure. Within five days after termination of this Agreement, the receiving party shall return to the disclosing party all Confidential Information of the disclosing party. The receiving party shall also erase or destroy Confidential Information stored on magnetic media or other computer storage. An officer of the receiving party shall certify in writing that all materials have been returned or destroyed.

TERM AND TERMINATION

16. The term of this Agreement begins on the date that MLS-SOMO signs it. This Agreement shall terminate upon the occurrence of any of the following events: (a) immediately upon termination of Firm's privileges as a Participant in MLS-SOMO; (b) 30 days after any party's notice to the others of its intent to terminate; (c) 10 days after any party's notice to another that the other has breached this Agreement, provided the breach remains uncured; (d) immediately upon any party's notice to another that the other has breached this Agreement, provided the breach is not susceptible to cure, is one of a pattern of repeated breaches, or has caused the party giving notice irreparable harm; (e) immediately upon Firm's notice to a Consultant that Consultant is no longer designated to provide IDX or VOW services to it; (f) with regard to any Salesperson Party, immediately upon any event that results in the Salesperson Party no longer being affiliated with Firm; (g) as provided in Paragraphs 26 and 29.

17. In the event Firm's privileges as a Participant (or Salesperson Party's privileges of affiliation with Firm) are terminated while this Agreement is in effect, and MLS-SOMO subsequently reinstates those privileges, this Agreement shall automatically be reinstated if MLS-SOMO resumes its obligations under Paragraphs 2 and 3. In the event Firm, Salesperson Party, or Consultant breaches this Agreement and entitles MLS-SOMO to terminate under Paragraph 16, MLS-SOMO may in its sole discretion suspend its performance instead of terminating this Agreement. MLS-SOMO may make this election by notice to the other parties within three days after the initiation of the suspension. Firm's, Salesperson Party's and Consultant's obligations hereunder continue during any period of suspension. In the event of any suspension or termination of this Agreement, Firm, Salesperson Party, and Consultant shall make no further use of the MLS-SOMO Data or any derivative works based on it (except the portions of it

relating to Firm's own listings) until and unless Firm's or Salesperson Party's rights under this Agreement are restored.

GENERAL PROVISIONS

18. **Applicable law.** This Agreement shall be governed by and interpreted according to the laws of the State of Missouri, without regard to its conflicts and choice of law provisions.

19. **Survival of Obligations.** The "Definitions," "Confidential Information," and "General" provisions of this Agreement shall survive its termination or expiration in perpetuity. Other provisions shall survive according to their terms.

20. **MLS-SOMO's Remedies.** (a) Injunctive relief: Because of the unique nature of the MLS-SOMO Data and Confidential Information, Firm, Salesperson Party, and Consultant acknowledge and agree that MLS-SOMO would suffer irreparable harm in the event that any of them breaches or threatens to breach its obligations under this Agreement, and that monetary damages would be inadequate to compensate MLS-SOMO for a breach. MLS-SOMO is therefore entitled, in addition to all other forms of relief, to injunctive relief to restrain any threatened, continuing or further breach by Firm, Salesperson Party, or Consultant, or any one of them, without showing or proving any actual damages sustained by MLS-SOMO, and without posting any bond. (b) Liquidated damages: Firm, Salesperson Party, and Consultant acknowledge that damages suffered by MLS-SOMO from access to the MLS-SOMO Data by an unauthorized third party as a result of disclosure of any passwords or an unauthorized disclosure of the MLS-SOMO Data to a third party would be speculative and difficult to quantify. Accordingly, as a material inducement to MLS-SOMO to enter into this Agreement, Firm, Salesperson Party, and Consultant agree that in the event Firm, Salesperson Party, Firm-Related Persons, or Consultant, or its employees, agents, or contractors, disclose any password to access the MLS-SOMO Data or disclose the MLS-SOMO Data itself to any unauthorized third party, regardless of whether such disclosure is intentional or negligent, Firm, Salesperson Party, and Consultant shall be liable to MLS-SOMO for liquidated damages in the amount of \$15,000 for each such disclosure and termination of this Agreement. Liability of Firm, Salesperson Party, and Consultant under this paragraph is joint and several.

21. **Limitation of liability/exclusion of warranties.** IN NO EVENT SHALL MLS-SOMO BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (EVEN IF MLS-SOMO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR LOST PROFITS ARISING FROM THIS AGREEMENT OR ANY BREACH OF IT. IN NO EVENT SHALL MLS-SOMO BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY AMOUNT IN EXCESS OF THE GREATER OF (A) THE FEES FIRM, SALESPERSON PARTY, AND CONSULTANT HAVE PAID MLS-SOMO, IF ANY, IN THE YEAR IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO ANY CLAIM FOR DAMAGES; OR (B) \$100. FIRM, SALESPERSON PARTY, AND CONSULTANT ACKNOWLEDGE THAT MLS-SOMO PROVIDES THE MLS-SOMO DATA ON AN "AS-IS," "AS-AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTY OF TITLE, NON-INFRINGEMENT, AND ACCURACY. MLS-SOMO SHALL NOT BE LIABLE TO FIRM, SALESPERSON PARTY, OR CONSULTANT FOR ANY CLAIM ARISING FROM INACCURACIES IN THE MLS-SOMO DATA, ANY FAILURE TO UPDATE THE MLS-SOMO DATA PROMPTLY, OR THE MLS-SOMO DATA'S INADEQUACY FOR ANY PARTICULAR USE, WHETHER PERSONAL OR COMMERCIAL. MLS-SOMO makes no warranty, including those regarding title, availability, or non-infringement, regarding trademarks licensed under this Agreement, if any.

22. **Dispute resolution; Attorney's fees.** In the event MLS-SOMO claims that Firm, Salesperson Party, or Consultant has violated the MLS-SOMO Policies, MLS-SOMO may, at its option, resolve such a claim according to the disciplinary procedures set out in the MLS-SOMO Policies. Except as set forth in the preceding sentence, any action or proceeding arising out of or relating to this Agreement, or the breach thereof, shall have venue in Greene County, Missouri. The parties irrevocably agree, consent, and submit themselves to personal jurisdiction in the courts of the State of Missouri located in Greene County or the federal court of the United States situated therein, as applicable, which shall have sole and exclusive jurisdiction over any action under this Agreement not subject to MLS-SOMO's disciplinary procedures. If MLS-SOMO prevails in an action or proceeding to enforce or interpret this Agreement or any provision hereof, it shall be entitled to reasonable attorney's fees and costs for the legal action.

23. **Indemnification.** Subject to Paragraph 21, in the event a party breaches any provision of this Agreement, that party (the Indemnifying Party) shall indemnify the other parties, their subsidiaries and affiliated companies, and all their respective employees, directors, agents, and authorized successors and assigns (the Indemnified Parties), against any and all losses, damages, and costs (including reasonable attorneys' fees) arising from each claim of any third party resulting from the breach. The Indemnified Parties shall (a) promptly notify the Indemnifying Party of any claim and give the Indemnifying Party the opportunity to defend or negotiate a settlement of any such claim at the Indemnifying Party's expense, and (b) cooperate fully with the Indemnifying Party, at the Indemnifying Party's expense, in defending or settling any claim. The Indemnified Parties shall be entitled to engage their own local counsel at the Indemnifying Party's expense.

24. **Notice.** All notices to be given under this Agreement shall be mailed, sent via facsimile transmission, or electronically mailed to the parties at their respective addresses set forth herein or such other address of which any party may advise the others in writing during the term of this Agreement; and shall be effective the earlier of the date of receipt or three days after mailing or other transmission.

25. **No Waiver.** No waiver or modification of this Agreement or any of its terms is valid or enforceable unless reduced to writing and signed by the party who is alleged to have waived its rights or to have agreed to a modification.

26. **No Assignment.** No party may assign or otherwise transfer any of its rights or obligations under this Agreement to any other party without the prior written consent of all other parties to this Agreement. Any purported assignment or delegation in contravention of this paragraph is null and void, and shall immediately cause this Agreement to terminate.

27. **Entire Agreement.** Subject to MLS-SOMO Policies, this Agreement contains the full and complete understanding of the parties regarding the subject matter of this Agreement and supersedes all prior representations and understandings, whether oral or written, relating to the same.

28. **Relationship of the Parties.** The parties hereunder are independent contractors. No party shall be deemed to be the agent, partner, joint venturer, franchisor or franchisee, or employee of MLS-SOMO or have any authority to make any agreements or representations on the behalf of MLS-SOMO. Each party shall be solely responsible for the payment of compensation, insurance, and taxes of its own employees.

29. **Severability.** Each provision of this Agreement is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect. In the event that any provision of this Agreement is held invalid or unenforceable by a court having jurisdiction over the parties, the invalid or unenforceable provision shall be replaced, if possible, with a valid provision, which most closely approximates the intent and economic effect of the invalid provision. In the event any provision of the limitation of liability, exclusion of warranties, or indemnification is held invalid or unenforceable, this Agreement shall immediately terminate.

Southern Missouri Regional MLS, LLC

IDX/VOW Data Access Agreement

Exhibit A – Additional Requirements

1. Additional Domains. In addition to the Domains specified on the signature page, Firm, Salesperson Party, and Consultant may display MLS-SOMO Data subject to the terms of this Agreement at the following Domains (attach additional pages if necessary):

_____	Select Use: <input type="checkbox"/> IDX <input type="checkbox"/> VOW <input type="checkbox"/> Firm Internal Use Type of Data Feed: <input type="checkbox"/> RETS <input type="checkbox"/> API
_____	Select Use: <input type="checkbox"/> IDX <input type="checkbox"/> VOW <input type="checkbox"/> Firm Internal Use Type of Data Feed: <input type="checkbox"/> RETS <input type="checkbox"/> API
_____	Select Use: <input type="checkbox"/> IDX <input type="checkbox"/> VOW <input type="checkbox"/> Firm Internal Use Type of Data Feed: <input type="checkbox"/> RETS <input type="checkbox"/> API
_____	Select Use: <input type="checkbox"/> IDX <input type="checkbox"/> VOW <input type="checkbox"/> Firm Internal Use Type of Data Feed: <input type="checkbox"/> RETS <input type="checkbox"/> API

2. Additional Salesperson Parties: If there are two or more Salesperson Parties, each Salesperson Party after the first is identified by name here, and each must sign this Agreement. Each Salesperson Party listed here consents to MLS-SOMO making communications and notices under this Agreement to Firm only. (Attached additional pages if necessary.)

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